

The Honorable MARSHA J. PECHMAN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CASSIE CORDELL TRUEBLOOD, next
friend of A.B., an incapacitated person, et al.,

Plaintiffs,

v.

THE WASHINGTON STATE
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, et al.,

Defendants.

NO. 2:14-cv-1178 MJP

DECLARATION OF
DR. THOMAS J. KINLEN –
AUGUST 2023 DATA &
CONTEMPT REPORT

I, Thomas J. Kinlen, am over the age of 18 years of age, competent to testify to the matters below, and declare based upon personal knowledge:

1. I am the Director of the Office of Forensic Mental Health Services (OFMHS) within the Behavioral Health Administration (BHA) of the Department of Social and Health Services (DSHS). As the Director, I am also a Deputy Assistant Secretary and an Appointing Authority who is an authorized representative of the Department of Social and Health Services.

2. As the Director, I am responsible for the delivery of forensic services in the State of Washington which includes competency to stand trial evaluations, competency restoration, and not guilty by reason of insanity evaluations. I am responsible for the operation of OFMHS

1 which includes oversight of contract / administrative management with competency restoration
 2 sites, establishing consistent policies, procedures and practices across the competency sites and
 3 State Hospitals, assisting forensic evaluators in completing job duties as assigned, and working
 4 with the key stakeholders across the state in addressing any issues and concerns related to
 5 forensic patients.

6 3. I joined the Department of Social and Health Services in May 2016. Prior to
 7 joining BHA, I served as the Superintendent at Larned State Hospital, in Larned, Kansas in which
 8 I was also serving as the Clinical Director, Supervising Psychologist for both the Sexual Predator
 9 Treatment Program and the State Security Program, and as the Director of Clinical Training for
 10 both the APA Accredited Psychology Internship and the APPIC certified Postdoctoral
 11 Fellowship training programs.

12 4. On July 7, 2016, this Court issued an order directing the Department to provide
 13 data in a format presented in a declaration by Dr. Bryan Zolnikov on June 17, 2016
 14 (Dkt. No. 278). I have reviewed the Court's order and worked with data staff to coordinate and
 15 provide the data the Court has requested. Attached as Attachment A is a true and correct copy of
 16 the February 2016 – July 2023 summary data of wait times, as well as the charts containing
 17 individual class members' wait times for July 2023. The data is now reported using the modified
 18 timelines set by the Court's Order (allowing for up to seven days for transmission of the court
 19 order). *See* Dkt. No. 408.

20 5. Fines are now calculated in accordance with the modified timelines adopted by
 21 the Court. Dkt. No. 408. Fines are assessed on a per-class member, per day basis. For inpatient
 22 admissions fines are calculated at \$500 for the first six days of non-compliance, and \$1000 per
 23 day for the seventh day and each additional day of non-compliance; for in-jail evaluations: \$750
 24 for the first six days of non-compliance, and \$1500 per day for the seventh day and each
 25 additional day of non-compliance. For additional information about how compliance is
 26 calculated, see the Parties Joint Motion to Adopt the Mediated Settlement Agreement

1 at Dkt. No. 389. The total fines are also currently being adjusted per the Second Revised
 2 Agreement Resolving Plaintiffs' Pending Motions and Establishing a Settlement Negotiation
 3 Process (Dkt. No. 535-1), as well as the Court's Order Granting Final Approval of Amended
 4 Settlement Agreement (Dkt. No. 623).

5 6. Attached as Attachment B is a true and correct proposed calculation of inpatient
 6 contempt fines for the period of July 1 – July 31, 2023. The first page contains a summary of the
 7 calculated restoration fines. The following pages include individual class member data, and
 8 demonstrate the calculations the Department used in order to reach the proposed restoration fine.
 9 This fines calculation also includes the temporary reduction in contempt fines as set out by the
 10 Parties' Second Revised Agreement Resolving Plaintiffs' Pending Motions and Establishing a
 11 Settlement Negotiation Process. Dkt. No. 535-1, at 7. Based on this data the Department
 12 proposes a total of \$6,116,000 in restoration contempt fines for the period of July 1 – July 31,
 13 2023.

14 7. Attached as Attachment C is an updated calculation of inpatient contempt fines
 15 for the period of June 1 – June 30, 2023. Data updates were made to cases tracked in the Forensic
 16 Data System (FDS) due to a combination of changes in client status from in-jail to PR, a state
 17 hospital admission, receiving orders late, and court order withdrawals, resulting in a net decrease
 18 of \$308,000 in contempt fines for the period of June 1 – June 30, 2023

19 8. Attached as Attachment D is an updated calculation of inpatient contempt fines
 20 for the period of May 1 – May 31, 2023. Data updates were made to cases tracked in the Forensic
 21 Data System (FDS) due to a combination of changes in client status from in-jail to PR and court
 22 order withdrawals, resulting in a net decrease of \$276,000 in contempt fines for the period of
 23 May 1 – May 31, 2023

24 9. Attached as Attachment E is an updated calculation of inpatient contempt fines
 25 for the period of April 1 – April 30, 2023. Data updates were made to cases tracked in the
 26 Forensic Data System (FDS) due to a combination of changes in client status from in-jail to PR

1 and court order withdrawals, resulting in a net decrease of \$158,500 in contempt fines for the
2 period of April 1 – April 30, 2023.

3 10. Attached as Attachment F is an updated calculation of inpatient contempt fines
4 for the period of March 1 – March 31, 2023. Data updates were made to cases tracked in the
5 Forensic Data System (FDS) due to a combination of changes in client status from in-jail to PR
6 and court order withdrawals, resulting in a net decrease of \$21,500 in contempt fines for the
7 period of March 1 – March 31, 2023.

8 11. Attached as Attachment G is a true and correct proposed calculation of outpatient
9 competency restoration contempt fines from July 1 – July 31, 2023. The first page of the
10 calculation contains a summary of the calculated outpatient competency restoration fines. The
11 following pages include individual class member data, and demonstrate the calculations the
12 Department used in order to reach the proposed outpatient competency restoration fine. Based
13 on this data, the Department proposes a total of \$29,000 in outpatient competency restoration
14 fines for the period of July 1 – July 31, 2023.

15 12. Attached as Attachment H is an updated calculation of outpatient competency
16 restoration fines for the period of June 1 – June 30, 2023. Data updates were made to cases
17 tracked in the Forensic Data System (FDS) due to data updates, resulting in a net decrease of
18 \$1,000 in outpatient competency restoration fines for the period of June 1 – June 30, 2023.

19 13. Attached as Attachment I is a true and correct proposed calculation of in-jail
20 evaluation contempt fines from July 1 – July 31, 2023. The first page of the calculation contains
21 a summary of the calculated in-jail evaluation fines. The following pages include individual class
22 member data, and demonstrate the calculations the Department used in order to reach the
23 proposed in-jail evaluation fine. Based on this data, the Department proposes a total of \$165,000
24 in in-jail evaluation contempt fines for the period of July 1 – July 31, 2023.

25 14. Attached as Attachment J is an updated calculation of in-jail evaluation contempt
26 fines for the period of June 1 – June 30, 2023. Data updates were made to cases tracked in the

1 Forensic Data System (FDS) due to due to a good cause extension being granted, resulting in a
 2 net decrease of \$3,000 in contempt fines for the period of June 1 – June 30, 2023. The June
 3 Declaration (Dkt. 1011_9, Attachment I) shows in-jail evaluation contempt fines totaling
 4 \$93,000. As a result of the policy to pay into the court fund when there is uncertainty as to
 5 whether a fine is owed, the net decrease of \$3,000 will not be applied until the court rules on the
 6 issue of good cause extensions and the \$93,000 will be paid into the court registry without credit
 7 being taken at this time.

8 15. Please note that in Attachments B – J any cell that contains the word “null”
 9 represents a value of zero. This alternative appearance is a result of changes made to the system
 10 to enable more automated reporting.

11 16. Under the Court’s Order Granting Final Approval of Amended Settlement
 12 Agreement (Dkt. No. 623), contempt fines relating to Dkt. No. 289 (inpatient fines) shall not be
 13 reduced to judgment. However, the Department will continue to calculate and report these
 14 inpatient contempt fines each month. The fine amount associated with a delay in admission to
 15 the outpatient competency restoration program, as described in Attachment G, is also being
 16 included in this suspended category because it is not an in-jail evaluation delay. Based on the
 17 current reporting period, as described in Attachments B and G, as well as the calculation updates
 18 discussed above and described in Attachments C through F, and H, the inpatient portion of the
 19 fines total \$5,380,000. This inpatient amount will not be included in the judgment, consistent
 20 with the Court’s Order (Dkt. No. 623).

21 17. RDA has been instructed to calculate fines with and without credit for good cause
 22 extensions going forward until the court decides whether the state should receive credit against
 23 fines. In the meantime the Department will continue to pay fines without GCE credit calculated.

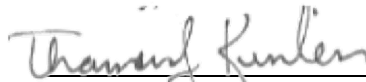
24 18. Under the Court’s Order Granting Final Approval of Amended Settlement
 25 Agreement (Dkt. No. 623), no changes were made to contempt fines relating to in-jail evaluation,
 26 and those fines shall continue to be calculated and reduced to judgment. Based on the current

1 reporting period for in-jail fines, as described in Attachment I, as well as the calculation updates
 2 discussed above and described in Attachment J and Attachment I to Docket 1011_9, the
 3 Department proposes that **the total judgment for this period should be in the amount of**
 4 **\$255,000.**

5 19. The data system is a dynamic system and relies on information provided from
 6 entities both in and outside of the Department, which can impact the fine calculations.
 7 The Department will continue to report on corrections to previously reported fine data in each
 8 monthly submission to ensure that all contempt fines are accurately captured.

9 I declare under penalty of perjury under the laws of the United States and the State of
 10 Washington that the foregoing is true and correct to the best of my knowledge.

11 Signed this 15th day of August 2023, at Olympia, Washington.

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15 DR. THOMAS KINLEN
 16 Director, Office of Forensic Mental Health Services
 17 Behavioral Health Administration
 18 Department of Social and Health Services
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CERTIFICATE OF SERVICE

I, *Christine Townsend*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I hereby certify that on this 15th day of August 2023, I electronically filed with foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

David Carlson: davidc@dr-wa.org

Kimberly Mosolf: kimberlym@dr-wa.org

Elizabeth Leonard: bethl@dr-wa.org

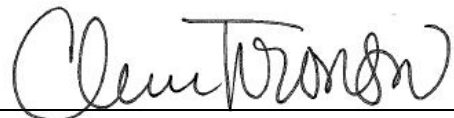
Christopher Carney: Christopher.Carney@CGILaw.com

Sean Gillespie: Sean.Gillespie@CGILaw.com

David JW Hackett: david.hackett@kingcounty.gov

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 15th day of August 2023, at Olympia, Washington.



CHRISTINE TOWNSEND
Paralegal